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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------------|---------------------|------------------|
| 10/722,041 | 11/24/2003 | Christopher F. Freudenberg | BPL0002/US | 8334 |
| 7590 | 01/04/2005 | | EXAMINER | |
| Mark W. Binder Kagan Binder, PLLC 221 Main Street North, Suite 200 Maple Island Building Stillwater, MN 55082 | | | LEV, BRUCE ALLEN | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3634 | |
| DATE MAILED: 01/04/2005 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/722,041 | FREUDENBERG ET AL. |
| | Examiner | Art Unit |
| | Bruce A. Lev | 3634 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 24 November 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-37 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 November 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

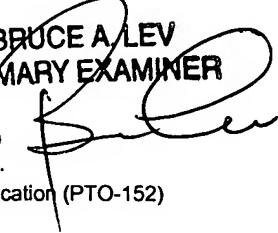
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.

- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

BRUCE A. LEV
PRIMARY EXAMINER



DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 1-20, 27, and 31 are rejected under 35 U.S.C. **112**, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As concerns claims 1, 3, 4, 6-8, 11-17, and 19, it is unclear as to whether the "method for creating an **enclosed space**" is being claimed, or the *combination* of the "enclosed **space**" and a "preexisting **structure**". For example, the preamble states a "method for creating an **enclosed space**". However, the body of the claims positively recites the structure being part of the invention, i.e., "attaching...barrier sheet to surfaces of...structural elements". If only the enclosed space is meant to be claimed, "adapted to be" language should be used when comparing it to a structure (i.e., "adapted to attach the...barrier sheet to surfaces of...structural elements").

As concerns claims 16, the phrase "comprising a part of a method" is not understood.

As concerns claims 17, the "physical material" does not appear to be part of the invention.

As concerns claims 27, the phrase "the ceiling" lacks antecedent basis and therefore renders the claims as vague and indefinite.

As concerns claims 31, the phrase "the plastic sheet" lacks antecedent basis and therefore renders the claims as vague and indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-17, 19, 20, and 34-37 are rejected under 35 U.S.C. 102(b) as being anticipated by ***Backberg 3,385,743***.

Backberg sets forth an enclosure and a method for creating an enclosed space comprising attaching barrier sheets **10** to surfaces of a structural member and including a holding system (inclusive of adhesive material **26**) extending over a majority surface along at least an end zone and an intermediate zone.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over ***Griffis 4,883,512 in view of Macormack 2,885,743***.

Griffis sets forth an enclosure and a method for creating an enclosed space comprising attaching barrier sheets to surfaces of a structural member including a holding system; and applying a negative pressure. ***What Griffis does not set forth*** are

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the barrier sheets being attached to the structural members via adhesive along at least an end zone and an intermediate zone. However, **Macormack teaches** the use of barrier sheets being attached to the structural members via adhesive along at least an end zone and an intermediate zone. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Griffis by incorporating adhesive along an end zone and an intermediate zone, as taught by Macormack, in order to more securely attach the barrier to the frame members of the structural member. As for the adhesive extending over a majority surface, including 20%, 50%, 80%, and 100%, the examiner takes the position that it would have been obvious to apply the adhesive over 20%, 50%, 80%, and 100% of the surface of the barriers through ordinary experimentation of optimal performance.

Conclusion

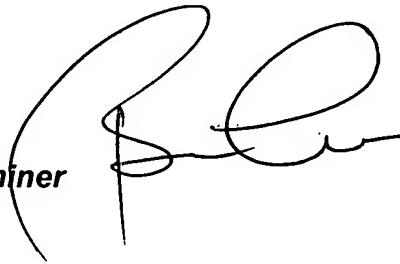
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

December 29, 2004

Bruce A. Lev

Primary Examiner

Group 3600

A handwritten signature in black ink, appearing to read "Bruce A. Lev". The signature is fluid and cursive, with the first name "Bruce" and last name "Lev" clearly legible.